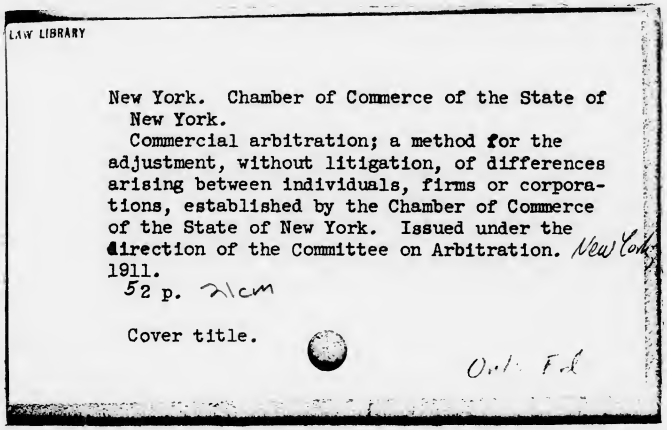
New York Chamber of Commerce

Commercial arbitration

New York

1911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COMMERCIAL ARBITRATION

A method for the adjustment, without litigation, of differences arising between individuals, firms or corporations, established by the

CHAMBER OF COMMERCE

OF THE

STATE OF NEW YORK

This method can be availed of by either members or non-members

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Issued under Direction of the Committee on Arbitration, 1911

COMMITTEE ON ARBITRATION

ELECTED BY THE CHAMBER AT THE MEETING
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HENRY HENTZ.
JAMES TALCOTT.
JAMES H. POST.
WILLIAM LUMMIS.
FRANK A. FERRIS.
ALGERNON S. FRISSELL.

[NOTE.—THE LIST OF OFFICIAL ARBITRATORS IS ON FILE AT THE OFFICE OF THE SECRETARY OF THE CHAMBER OF COMMERCE.]

REPORT OF SPECIAL COMMITTEE

ON

COMMERCIAL ARBITRATION

ADOPTED AT THE MEETING HELD

JANUARY 5, 1911, BY THE

CHAMBER OF COMMERCE

OF THE

STATE OF NEW YORK

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REPORT.

CHARLES L. BERNHEIMER, Chairman of the Special Committee on Commercial Arbitration submitted the following report:

To the Chamber of Commerce:

Your Special Committee on Commercial Arbitration was appointed at the meeting of March 3d, last,* pursuant to the following resolution, offered by the Executive Committee:

> *Resolved*, That the President of the Chamber be instructed to appoint a special committee of five members, to consider and report whether there is a need of re-establishing in the Chamber a Court or Committee of Arbitration, and if so to suggest a feasible plan for such arbitration.

I.

Your Committee has given careful consideration to the question whether there is a need of re-establishing in the Chamber a Court or Committee on Arbitration, and finds there is need of such a Committee, and that it would perform a valuable public service in the settlement of business disputes and differences, saving much expenditure of money and many tedious delays and vexations incident to trials in Courts of Law.

In its efforts to fix upon a feasible plan your Committee has carefully examined the records of the Chamber, and finds that at the very first meeting of this body, a Committee on Arbitration was organized, that the public eagerly availed itself of the privilege of arbitration whenever opportunity was offered, and that the deep interest of the Chamber itself was shown in the conferences and discussions tending to improve the methods. While these changes were not always as satisfying as had been hoped, there was never a time when organized arbitration facilities were not available, until after the Court of Arbitration period, a period closely associated with the valued services

* 1910

rendered to the Chamber by Judge ENOCH L. FANCHER,—to which fuller reference will be made later in this report.

In view of these facts, and others contained in this paper, your Committee begs to report that it has prepared a plan for the re-establishment of a Committee on Arbitration which it submits herewith, in connection with the needed amendments to the By-laws of the Chamber.

[The amendments are printed on page 11.]

II.

For the purpose of ascertaining the best and most suitable method of arbitration for adoption by the Chamber, the following sources of information have been studied:

(1) The Charters and By-laws of the New York Stock, Produce and Cotton Exchanges as far as they relate to arbitration

(2) The Charters and By-laws of eleven American Chambers of Commerce and Boards of Trade.

(3) The Charters and By-laws of three such bodies in Canada.

(4) The Charter and By-laws of the London Chamber of Commerce.

(5) The Consular Reports on Commercial Courts of Europe, as furnished by the Department of Commerce and Labor at Washington for the year 1909.

To the above has been added a study of the history of Commercial Arbitration as practiced in the Chamber of Commerce, based on a synopsis thereof prepared for your Committee by Mr. JULIUS HENRY COHEN, a member of the New York Bar. This synopsis is filed as part of this report, but not printed because of its length.

The Consular Reports of the experience of Commercial Courts on the European Continent, show that they are successful almost without exception, and that they enjoy the respect and confidence of their respective commercial communities. The New York Chamber of Commerce, cannot, however, pattern an Arbitration Court on the lines and plans of these Courts because of fundamental differences in laws, customs and view-points. The London Court of Arbitration is probably a better guide, because of the similarity between English institutions and our own.

Your Committee deems it of sufficient importance to the Chamber to introduce at this point in its presentation extracts from an address delivered on February 19, 1909, by Sir ALBERT K. ROLLIT, Ex-President of the Chamber of Commerce of London, and Chairman of its Arbitration Committee, on the subject of Commercial Arbitration as practiced at the London Court of Arbitration:

"Arbitration is indeed the natural right of disputants to choose their own tribunal, and is the practical art of vindicating and reconciling disputants, and doing so at a minimum of expenditure, time and trouble.

"Except for arbitration there would be many cases in which justice would be denied.

"Even rough and ready trade arbitrations are necessary in modern commercial life.

"There is no rivalry in arbitration with the law or the administration of the law.

"The work of the London Court of Arbitration is speedily done, and affords the disputants the opportunity of choosing their own commercial Court and judges. As the suitors choose their own judges, there can be no appeal, except on points of law or misconduct.

"The proceedings have the advantage that the Arbitrator is both judge and jury; and being generally selected for his trade knowledge, which dispenses with numberless witnesses, permits of cases being dealt with in a manner which would be impossible from the Bench.

"Many of the cases have been heavy and important; in one the Court has been asked not only to judge and revise resolutions passed by the directors of a company, but to substitute, if it thought proper, such resolutions as should under the circumstances and in its judgment, have been passed in the interest of the company.

"In regard to international arbitrations, steps are being taken to arrange for giving legal effect to those cases in which citizens of Great Britain and other nations are interested, or in which such citizens may become parties to an arbitration."

III.

For the convenience of the Chamber, your Committee here presents a brief synopsis of the experiences of the Chamber in the past in endeavoring to provide opportunities for Commercial Arbitration, giving in concise form the modus operandi of each period and some reasons for the discontinuance of each method respectively.

PERIOD FROM 1768 TO 1861.

From the very date of organization, the Chamber's Committees on Arbitration and Committee on Appeal were used frequently, and in the main gave great satisfaction. The weakness disclosed in this plan was that parties could withdraw *after* arbitration had begun, and *before* award had been made; and no method existed for enforcing the awards.

(1839) A movement was begun to establish by legislative enactment a Tribunal of Commerce with power to determine *all* litigations between

merchants. Trials were to be by juries composed of merchants only, the juries to determine by bare majorities and to be both the judges of the law and the facts.

The Chamber failed to adopt this plan after much serious debate.

(1851, February and May) A new movement was begun under the leadership of Mr. JOHN J. BOYD to secure by an act of the Legislature the establishment of a Court of Commerce in the City of New York. Draft of bill to be submitted was discussed at several meetings. The proposed act was inconsistent with the provision of the Constitution requiring unanimous verdicts by juries. It was likewise inconsistent with the scheme of the Constitution, dividing into three divisions the powers of the State. It furthermore provided that the Chamber should select the judges and the jurors, and that the expense of the Court should be borne by the City. This Court was to be a Court of Record, and all processes issuing from it were to have the like power, validity and effect, as if issuing from the Supreme Court of this State. This plan was tabled. If enacted into law it probably would have been declared unconstitutional.

(1855, July) Amendment of the By-laws of the Chamber was proposed and passed, creating two standing committees, called "The Committee on Arbitration" and "The Committee on Appeal," for the determination of such mercantile disputes as might be submitted to the Committees.

(1860, April and May) Further efforts were made under the leadership of Mr. JAMES DE PEYSTER OGDEN, towards obtaining from the Legislature additional power for the Arbitration Committee of the Chamber of Commerce so that—"a final and binding decision may be rendered in mercantile questions, with little delay and at trifling expense, and so that an award of the Committee could not be reversed or appealed from."

This resulted in the Act of the Legislature passed April 15, 1861, known as Chapter 251 of the Laws of 1861.

(1861) The Chamber at a meeting held April 25, 1861, resolved that it accepted and bound itself to act under the foregoing Act (Chapter 251 of the Laws of 1861.) At a subsequent meeting, articles were adopted relating to the election of Standing Committees on Arbitration and on Appeal, to whom all mercantile disputes which might arise between the members of the Chamber, or between parties claiming by, through or under them, might be referred by mutual agreement. Each Committee was given power to appoint a clerk, and to adopt appropriate rules to govern the procedure before it.

PERIOD FROM 1861 TO 1874.

(1861 to 1873) During this period the arbitration system at the Chamber of Commerce, pursuant to Chapter 251 of the Laws of 1861, was used frequently and in the main satisfactorily; in fact it proved to be the most satisfactory plan yet tried. Under it the decisions of the Committee of Arbitration could be made the basis of a judgment in a Court of Record.

(1873, October 2d) Resumption of Agitation for a Tribunal of Commerce.

(1874) Passage of Chapter 278 of the Laws of 1874, creating a "Court of Arbitration" for the arbitration of mercantile disputes in the Port of New York.

(1875) Amendment by the Legislature of Chapter 278 of the Laws of 1874 with Chapter 495 of the Laws of 1875, for the purpose of giving additional power to the Court of Arbitration.

PERIOD FROM 1874 TO 1895.

Arbitration by Court of Arbitration. Judge ENOCH L. FANCHER, Official Arbitrator, and GEORGE WILSON, Arbitration Clerk, both appointed by the Governor of the State under Chapter 278 of the Laws of 1874, and Chapter 495 of the Laws of 1875. Mr. ELLIOT F. SHEPARD was the leader in the formation of this Court. The plan as long as it remained operative was eminently successful, but was open to these criticisms:—

1. Its financial support was precarious;—it was left to the Legislature, which, after 1878, refused to make appropriation;
2. The plan attempted to cover every kind of commercial dispute and to dispose of it Court-fashion;
3. It attempted to give merchants in the Port of New York a special court, and in that respect was treated by the community as "class legislation," and met with much unpopularity.

Your Committee is of the opinion that the Statute providing for a Court of Commerce need not be revived at this time. It does not, in its judgment, furnish the best model to be followed. The method of 1768 to 1861, though rough and ready, re-enforced by the Law of Arbitration under the Code of Civil Procedure, Sections 2365 to 2386, (providing that a decision of the Board of Arbitration can be made the basis of judgment in a Court of Record) seems to us to offer more elements for a feasible plan. The one submitted, supplemented by the regulations and rules that a Committee on Arbitration shall make for its proceedings, particularly in regard to the "Submission" to be signed by the disputants, your Committee feels confident will meet existing needs.

Dependence on the Legislature for support, in their effort to make the award a binding one, is the rock on which most arbitration plans of this Chamber have come to grief. The enforcement of the award, is recognized by your Committee as of great importance, but after consideration it believes that to rest the entire plan upon this phase of it is equivalent to sacrificing the whole to save a part. This

weakness and possibly others are, in our judgment, offset by certain strong moral considerations that it does not seem unreasonable to reply upon:

FIRST: The voluntary submission in good faith to the Chamber on the part of both disputants, makes it likely that neither will withdraw after arbitration has begun and before the award is made and that both will be satisfied with the result; and

SECOND: It is not probable that a merchant would be willing to blemish his fair name by repudiating a written agreement with a reputable body of public-spirited men.

IV.

Where two parties have an honest difference of opinion, arbitration offers the best results. In cases where one of the parties means to be dishonest, there is no room for arbitration. Prima facie examination of the "Submission" will, in most instances, determine whether a case should be heard or dismissed.

Finally, it is your Committee's opinion that the plan as outlined by them, will give satisfaction, and offers the facilities that are so much needed. They believe this plan affords the opportunity to merchants to settle with the assistance of a public-spirited body of unbiased men (without too great a call on their time), many minor commercial disputes which, when compromised, tend to lower the standard of commercial integrity, or when forced into court produce rancor, unnecessary waste of time and money, and untold annoyance as well as long delay in the courts in the disposition of those matters for which they are specially organized.

CHARLES L. BERNHEIMER,
JAMES TALCOTT,
HENRY HENTZ,
FRANK A. FERRIS,
ALEXANDER E. ORR,

Special Committee on Commercial Arbitration.

AMENDMENTS TO THE BY-LAWS

ESTABLISHING THE METHOD OF ARBITRATION AND DEFINING THE DUTIES OF THE COMMITTEE ON ARBITRATION

ADOPTED BY THE CHAMBER AT THE MEETING HELD FEBRUARY 2, 1911

BY-LAWS ESTABLISHING ARBITRATION

Amend Article VIII. of the By-laws (Standing Committees) by adding to the list of Standing Committees the following: "A Committee on Arbitration."

Amend Article IX. of the By-laws ("Duties of Standing Committees") by adding after the paragraph describing the duties of the Committee on the Charity Fund, the following:

"*Of the Committee on Arbitration.*—This Committee shall have complete supervision of all matters of arbitration referred to the Chamber and shall make rules and regulations for the conduct and disposition of all matters submitted in arbitration; it shall provide a form of agreement not inconsistent with existing provisions of law by which, so far as practicable the decision of the arbitrator or arbitrators shall become as effective as a judgment of the Supreme Court.

"It shall compile and from time to time revise and keep a list of qualified persons, not less than fifty, willing to act as arbitrators under these rules, who shall be members of the Chamber. This list shall be known as—'THE LIST OF OFFICIAL ARBITRATORS' of the Chamber of Commerce.

"Any matter in controversy may be referred by the disputants signing the form of agreement provided by the Committee, together with a stipulation to the effect that they will abide by the decision of the arbitrator or arbitrators, by them selected, and waiving any and all right to withdraw from such submission after the acceptance of their appointment by the arbitrator or arbitrators selected, and designating at their option either

(*a.*) One of the persons named in said 'List of Official Arbitrators,' who shall act as sole arbitrator; or

(*b.*) Any two persons to act as arbitrators, who in turn shall designate from said 'List of Official Arbitrators,' a third person to be associated with them as arbitrators; or

(*c.*) The Committee on Arbitration of the Chamber of Commerce or a quorum thereof.

"In any case the Committee on Arbitration may, in its discretion, decline to entertain a matter submitted for arbitration, in which event the selection of special Arbitrator or Arbitrators shall be void.

"The Committee on Arbitration shall, from time to time, establish a schedule of moderate fees to be paid in all matters submitted, which fees shall be chargeable as decided by the arbitrators.

"The Secretary of the Chamber of Commerce shall be the Clerk of the Committee on Arbitration."

THE OATH OF OFFICE

OATH ADMINISTERED TO COMMITTEE

By Justice VERNON M. DAVIS.

We, the undersigned, do each for ourselves solemnly swear that we will faithfully perform the duties of a member of the Committee on Arbitration of the Chamber of Commerce of the State of New York, and faithfully and fairly hear and examine all matters in controversy submitted to us as members of said Committee under the provisions of law authorizing said submission, and to make a just award according to the best of our understanding.

(Signed) CHARLES L. BERNHEIMER,
JAMES TALCOTT,
FRANK A. FERRIS,
A. S. FRISSELL,
WILLIAM LUMMIS,
JAMES H. POST,
HENRY HENTZ.

Sworn to before me this 1st day of June, 1911.

(Signed) VERNON M. DAVIS,
Justice of the Supreme Court of the State of New York.

ADDRESS DELIVERED BY

JUSTICE VERNON M. DAVIS

OF THE SUPREME COURT

OF THE

STATE OF NEW YORK

BEFORE THE CHAMBER OF COMMERCE, JUNE 1, 1911

ADDRESS OF HONORABLE VERNON M. DAVIS.

JUSTICE OF THE SUPREME COURT OF NEW YORK.

Mr. Justice DAVIS.—Mr President, and gentlemen of the Chamber. As your President has said, my presence here, to-day, is explained by the statute under which your Committee on Arbitration has been formed. That committee is required to take the oath of office, and that oath has just been administered. Although it is always an honor to any citizen to be invited to attend a meeting of this august body, I do not take this invitation as a personal compliment to myself, but rather as an expression on your part of a desire to bring your system of arbitration into full co-operation with the Supreme Court of the State of New York, and I may say to the members of this Committee on Arbitration that the confidence implied in being selected as an arbitrator by the business men of this community, is a reason for just pride on the part of those selected.

I know of no other function of business life more useful than that of acting as an impartial judge between business men in their various disputes. The time and trouble incident to your office will be great, but the sacrifices you make will entitle you to the lasting gratitude of a very large and important part of the business community, and indeed of the people of this great city.

I sincerely congratulate you upon your appointment to the high office which you have now assumed. I also congratulate this Chamber of Commerce upon bringing again into existence a simple and effective plan for settling business disagreements without resort to the courts. In this, as in many other things, the Chamber has maintained its character of being alive to all public needs, and has performed an important public service. Why should business men undertake long and expensive litigation over ordinary differences arising between them? I think it must be a habit, and a bad habit too. I am hopeful to predict, and I appeal to your experience to justify that prediction, that a very large number of the disputes that are now carried to the courts will be settled speedily and inexpensively under the scheme of arbitration which has just been adopted by this Chamber. Of course there remain many controversies impossible of settlement without the aid of judges and courts,—cases where the facts to be established depend on the conflicting testimony of many witnesses, and the judgment to be pronounced requires the decision of intricate questions of law. Such cases will still go to the courts and not to arbitration.

The plan adopted by the Chamber is in no sense in competition with the courts, nor can it be justly regarded as a protest against any real or fancied delay in the administration of justice in this city. It has arisen out of an obvious condition of business life here, the obvious fact that it is practicable to avoid the delay and expense of a suit in court by a resort to arbitration, and the courts look upon these settlements with great favor, and it is the policy of the law to encourage arbitration, so much so that by special statute the awards of arbitrators may become the judgment of the Supreme Court, judgments of as high a sanction as those obtained in the formal litigation in the courts.

The business community is fortunate in being able now to call to its services as arbitrators, through your initiative, so many men of experience. Arbitration as you have established it will become an important part of business life, and it will continue so long as the simple principle of arbitration is maintained, and so long as it avoids the strict formalities of the courts. It will not do to develop this plan of arbitration into an arbitration court. This Chamber has had experience with an arbitration court. We shall long remember and with great respect, the valuable services of the court presided over by that distinguished Jurist, Judge FANCHER, but the ultimate extinction of that court seemed inevitable, as it was not quite in line with the constitutional principles of our institutions, and its decisions were arrived at not informally, but with increasing formality, reaching unto the dignity of a court of justice. That result should be avoided in the plan which you have adopted. It should maintain its simplicity, its lack of formality, and there should be, as I believe there will be, a ready submission to its awards; and this plan of arbitration, if it meets with favor, we can imagine being extended throughout the length and breadth of this land. If it is useful, it will be so extended, it will be so maintained, and who can tell the effect of such a plan as this and, its educational value upon the development of patriotism? It will bring into business life more charity, and less harshness, more humanity, and it may develop a strong sentiment in favor of a higher form of arbitration, the arbitration of disputes between nations, and as a result of that, the development of a higher form of patriotism, patriotism that is based not only upon love of country, but upon the love of our fellow men.

Gentlemen, I bespeak for this Committee on Arbitration the fullest confidence of the business community of this City. I believe it will be a great success, and that it will save lots of money and lots of time. [Applause].

RULES AND REGULATIONS

GOVERNING THE CONDUCT OF ARBITRATIONS UNDER THE BY-LAWS OF THE CHAMBER

ADOPTED BY THE COMMITTEE ON ARBITRATION, MAY 1911

RULES AND REGULATIONS

I.

All Submissions shall be in proper form and a copy filed with the Clerk, duly acknowledged before a notary or other authorized official as required by law, together with sufficient evidence of proof of authority in the case of an agency, partnership or corporation,

(*a.*) If signed by an agent, duly authenticated copy of his power of attorney ;

(*b.*) If signed by one or more partners, written consent from co-partners not signing Submission ;

(*c.*) If signed in behalf of a corporation, duly certified copy of resolution authorizing Submission :

II.

The proceedings shall not be public unless requested by the parties. Members of the Committee on Arbitration may be present at any of the hearings. The records shall be open at all times to members of the Chamber of Commerce and others upon the written order of the Committee on Arbitration.

III.

The hearing of cases shall commence as soon as practicable after Submission, and shall be pressed to speedy termination.

IV.

All irrelevant or unimportant matters shall be excluded.

V.

The Arbitrators shall construe these rules and the submission to them as being designed to secure reason and equity in matters of trade and commerce, with the least possible expenditure of time, energy and money and in such manner as to avoid all unnecessary irritation.

VI.

If three Arbitrators are chosen, the one chosen from the "List of Official Arbitrators" shall act as Chairman.

VII.

Each party to the Arbitration shall be entitled to a copy of the award.

VIII.

The Chamber of Commerce will provide the parties who submit to Arbitration under its rules, with adequate room and all necessary forms and papers free of charge, and through its Committee on Arbitration, will endeavor to do or cause to be done all such acts as it properly may do for the purpose of assisting the parties and the Arbitrators in the course of an Arbitration.

IX.

Each party shall furnish his own witnesses, paying the fees thereof.

X.

A competent stenographer shall be employed, and the expense for this service is to be charged against the parties to the Submission as the Arbitrators may decide.

XI.

In case of any misunderstanding or any question concerning the interpretation of these Rules and Regulations, the decision of the Committee on Arbitration of the Chamber of Commerce, shall be accepted by the parties as conclusive.

XII.

Wherever the word "Party" or "Parties" is used in these rules it shall refer to the parties to the Submission, and wherever the word "Arbitrator" or "Arbitrators" is used it shall refer to the Arbitrator or Arbitrators as the case may be, whether there are one or more. Whenever the word "Committee" is used, it shall refer to the Committee on Arbitration of the Chamber of Commerce. Whenever the word "Clerk" is used, it refers to the Clerk of the Committee on Arbitration.

FEES.

All fees of Arbitrators, expense for stenographers and other minor expenses shall be awarded as the Arbitrators may decide.

DEPOSIT.

The parties to the Submission shall each deposit with the Clerk at the time of filing the Submission, the sum of $60.00—or at the discretion of the Committee, a larger amount—which shall be disbursed by him for their account in payment of Arbitrators' and stenographers' fees and minor expenses:

(*a.*) Arbitrators' fees: $10.00 per day or part thereof;

(*b.*) Stenographers' fees: the usual remuneration;

(NOTE.—The fees for Stenographer are based on the following:

25 cents per folio of 10 lines, and 5 cents per folio each for the second and third copies.)

If the Deposit appears insufficient to the Clerk, or becomes exhausted, he shall call upon the parties equally for such further sums as may be required: any balance to be refunded as the Arbitrators may decide.

THE CLERK.

The duties of the Clerk of the Committee on Arbitration shall be as follows:

He shall receive and file all Submissions, all copies of awards, give notice of all hearings, keep a docket of all cases, and such other books and memoranda as the Committee shall from time to time direct.

He shall render all necessary assistance to the Arbitrators, attend to their clerical work; receive and disburse all fees and costs and keep careful and accurate account thereof, under the supervision of the Committee on Arbitration.

If the clerk of the Committee on Arbitration is unable to attend, the Assistant Secretary of the Chamber of Commerce shall take his place.

AMENDMENTS.

The Committee reserves full power to amend, add to or omit any of these rules from time to time, as may be found expedient.

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AMENDMENTS.

The Committee reserves full power to amend, add to or omit any of these rules from time to time, as may be found expedient.

FORMS OF SUBMISSION

TO BE USED IN SUBMITTING FOR ARBITRATION
CASES OF DIFFERENCE

FORM OF SUBMISSION.

FORM A.

THE COMMITTEE ON ARBITRATION OF THE CHAMBER OF COMMERCE OF THE STATE OF NEW YORK.

and	*Submission.*

A controversy, dispute or matter of difference between the undersigned having arisen and relating to a subject matter the nature of which, briefly stated, is as follows :

We do hereby voluntarily submit the same and all matters concerning the same to as Arbitrator, selected by us from the "LIST OF OFFICIAL ARBITRATORS," compiled and established by the Committee on Arbitration of the Chamber of Commerce of the State of New York, for hearing and decision pursuant to the By-laws of the Chamber of Commerce of the State of New York, and the Rules and Regulations adopted by the Committee on Arbitration of the Chamber of Commerce, and pursuant to Chapter 17, Title VIII. of the Code of Civil Procedure of the State of New York, and we agree to stand to, abide by and perform the decision, award, order, orders and judgment that may therein and thereupon be made under, pursuant and by virtue of, this submission.

And we do further agree that a judgment of the Supreme Court of the State of New York, may be entered in any County in the State of New York thereon.

We do also in all respects waive any right to withdraw from or revoke this submission after the arbitrator or arbitrators accept their appointment hereunder, hereby expressly and specifically waiving the provisions of Section 2383 of the Code of Civil Procedure.

Dated, NEW YORK.

CORPORATION.

STATE OF NEW YORK,)
COUNTY OF NEW YORK,) *ss:*

On this day of 19 , before me personally came and appeared to me known and known to me to be the person who executed the foregoing instrument, who being duly sworn, did depose and say that he is the of the above named corporation and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that he was duly authorized to sign and seal the said instrument in behalf of the said corporation by authority of its Board of Directors and said acknowledged said instrument to be the free act and deed of said corporation.

Sworn to before me this
day of , 19 .

Notary Public.

FIRM.

STATE OF NEW YORK,)
COUNTY OF NEW YORK,) *ss:*

On this day of 19 , before me personally came and appeared , to me known and known to me to be the person who executed the above instrument, who being duly sworn by me, did for himself depose and say that he was a member of the firm, whose signature he signed, and seal he affixed, and he had authority to sign the same and affix said seal; and he did duly acknowledge to me that he executed the foregoing instrument on behalf of his said firm.

Sworn to before me this
day of , 19 .

Notary Public.

INDIVIDUAL.

STATE OF NEW YORK,)
COUNTY OF NEW YORK,) *ss:*

On the day of 19 , before me personally came to me known and known to me to be the same person described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Sworn to before me this
day of , 19 .

Notary Public.

FORM OF SUBMISSION.

FORM B.

THE COMMITTEE ON ARBITRATION OF THE CHAMBER OF COMMERCE OF THE STATE OF NEW YORK.

and } *Submission.*

A controversy, dispute or matter of difference between the undersigned having arisen and relating to a subject matter the nature of which, briefly stated, is as follows:

We do hereby voluntarily submit the same and all matters concerning the same to and who shall select a third arbitrator from the "LIST OF OFFICIAL ARBITRATORS," compiled and established by the Committee on Arbitration of the Chamber of Commerce of the State of New York, for hearing and decision pursuant to the By-Laws of the Chamber of Commerce of the State of New York, and the Rules and Regulations adopted by the Committee on Arbitration of the Chamber of Commerce, and pursuant to Chapter 17, Title VIII. of the Code of Civil Procedure of the State of New York, and we agree to stand to, abide by and perform the decision, award, order, orders and judgment that may therein and thereupon be made under, pursuant and by virtue of, this submission.

And we do further agree that a judgment of the Supreme Court of the State of New York may be entered in any County in the State of New York thereon.

We do also in all respects waive any right to withdraw from or revoke this submission after the arbitrator or arbitrators accept their appointment hereunder, hereby expressly and specifically waiving the provisions of Section 2383 of the Code of Civil Procedure.

Dated, NEW YORK.

[Use same forms of affidavits as given on pages 30-1.]

FORM OF SUBMISSION.

FORM C.

THE COMMITTEE ON ARBITRATION OF THE CHAMBER OF COMMERCE OF THE STATE OF NEW YORK.

and } *Submission.*

A controversy, dispute or matter of difference between the undersigned having arisen and relating to a subject matter the nature of which, briefly stated, is as follows:

We do hereby voluntarily submit the same and all matters concerning the same to

as Committee on Arbitration of the Chamber of Commerce, or a quorum thereof, as Arbitrators selected by us for hearing and decision pursuant to the By-laws of the Chamber of Commerce of the State of New York, and the Rules and Regulations adopted by the Committee on Arbitration of the Chamber of Commerce, and pursuant to Chapter 17, Title VIII. of the Code of Civil Procedure of the State of New York, and we agree to stand to, abide by and perform the decision, award, order, orders and judgment that may therein and thereupon be made under, pursuant and by virtue of, this submission.

And we do further agree that a judgment of the Supreme Court of the State of New York may be entered in any County in the State of New York thereon.

We do also in all respects waive any right to withdraw from or revoke this submission after the arbitrator or arbitrators accept their appointment hereunder, hereby expressly and specifically waiving the provisions of Section 2383 of the Code of Civil Procedure.

Dated, NEW YORK.

[Use same forms of affidavits as given on pages 30-1.]

LAW OF ARBITRATION

OF THE

STATE OF NEW YORK

CHAPTER 17, TITLE VIII., CODE OF CIVIL PROCEDURE, 1910

CODE PROVISIONS
RELATING TO LAW OF ARBITRATION

§2365 When submission to arbitration cannot be made.

A submission of a controversy to arbitration cannot be made, either as prescribed in this title or otherwise, in either of the following cases:

1. Where one of the parties to the controversy is an infant, or a person incompetent to manage his affairs, by reason of lunacy, idiocy, or habitual drunkenness.

2. Where the controversy arises respecting a claim to an estate in real property, in fee or for life.

But where a person, capable of entering into a submission, has knowingly entered into the same with a person incapable of so doing, as prescribed in subdivision first of this section, the objection, on the ground of incapacity, can be taken only in behalf of the person so incapacitated. And the second subdivision of this section does not prevent the submission of a claim to an estate for years, or other interest for a term of years, or for one year or less, in real property; or of a controversy respecting the partition of real property between joint tenants or tenants in common; or of a controversy respecting the boundaries of lands, or the admeasurement of dower.

§2366 What controversies may be submitted, and how.

Except as otherwise prescribed in the last section, two or more persons may, by an instrument in writing, duly acknowledged or proved, and certified, in like manner as a deed to be recorded, submit, to the arbitration of one or more arbitrators, any controversy, existing between them at the time of the submission, which might be the subject of an action. They may, in the submission, agree that a judgment of a court of record, specified in the instrument, shall be rendered upon the award, made pursuant to the submission. If the supreme court is thus specified, the submission may also specify the county in which the judgment shall be entered. If it does not, the judgment may be entered in any county.

§2367 Appointment of additional arbitrator or umpire.

Where a submission is made as prescribed in this title, an additional arbitrator or an umpire cannot be selected or appointed, unless the submission expressly so provides. Where a submission, made either as prescribed in this title or otherwise, provides that two or more arbitrators, therein designated, may select or appoint a person as an additional arbitrator or as an umpire, the selection or appointment must be in writing. An additional arbitrator or umpire must sit with the original arbitrators upon the hearing. If testimony has been taken before his selection or appointment, the matter must be reheard, unless a rehearing is waived in the submission, or by the subsequent written consent of the parties, or their attorneys.

§2368 Time for hearing; adjournment, etc.

Subject to the terms of the submission, if any are specified therein, the arbitrators, selected as prescribed in this title, must appoint a time and place for the hearing of the matters submitted to them; and must cause notice thereof to be given to each of the parties. They, or a majority of them, may adjourn the hearing, from time to time, upon the application of either party, for good cause shown, or upon their own motion; but not beyond the day fixed in the submission for rendering their award, unless the time so fixed is extended by the written consent of the parties to the submission, or their attorneys.

§2369 Arbitrators to be sworn.

Before hearing any testimony, arbitrators selected either as prescribed in this title or otherwise must be sworn, by an officer designated in section eight hundred and forty-two of this act,* faithfully and fairly to hear and examine the matters in controversy, and to make a just award, according to the best of their understanding; unless the oath is waived, by the written consent of the parties to the submission, or their attorneys.

* §842—An oath or affidavit, required or authorized by law; except an oath to a juror or a witness upon a trial, an oath of office, and an oath required by law to be taken before a particular officer; may be taken before a judge, clerk, deputy-clerk, or special deputy-clerk, of a court, a notary public, mayor, justice of the peace, surrogate, special county judge, special surrogate, county clerk, deputy county clerk, special deputy county clerk, or commissioner of deeds, within the district in which the officer is authorized to act; and when certified by the officer, to have been taken before him, may be used in any court, or before any officer or other persons.

§2370 Attendance of witnesses, etc.

The arbitrators, selected either as prescribed in this title, or otherwise, or a majority of them, may require any person to attend before them as a witness; and they have, and each of them has, the same powers, with respect to all the proceedings before them, which are conferred, by the provisions of title second of chapter ninth of this act, upon a board, or a member of a board, authorized by law to hear testimony.*

§2371 All the arbitrators to meet; when majority may award. Fees.

All the arbitrators, selected as prescribed in this title, must meet together, and hear all the allegations and proofs of the parties; but an award by a majority of them is valid, unless the concurrence of all is expressly required in the submission. Unless it is otherwise expressly provided in the submission, the award may require the payment, by either party, of the arbitrators' fees, not exceeding the fees allowed to a like number of referees in the supreme court; and also their expenses.

§2372 Award; to be authenticated, etc.

To entitle the award to be enforced, as prescribed in this title, it must be in writing; and, within the time limited in the submission, if any, subscribed by the arbitrators making it; acknowledged or proved, and certified, in like manner as a deed to be recorded; and either filed in the office of the clerk of the court, in which, by the submission, judgment is authorized to be entered upon the award, or delivered to one of the parties, or his attorney.

* §854—When a judge, or an arbitrator, referee, or other person, or a board or committee, or a committee of either house of the legislature, or a joint committee thereof, duly empowered by resolution or act to sit and take testimony during the session thereof, or after the adjournment thereof, has been heretobefore or is hereafter expressly authorized by law to hear, try, or determine a matter, or to do any other act in an official capacity, in relation to which proof may be taken, or the attendance of a person as a witness may be required; or to require a person to attend, either before him or it, or before another judge, or officer, or a person designated in a commission issued by a court of another state or country, to give testimony, or to have his deposition taken, or to be examined; a subpoena may be issued, by and under the hand of the judge, arbitrator, referee, or other person, or the chairman or a majority of the board or committee, requiring the person to attend; and also, in a proper case, to bring with him a book or a paper. The subpoena must be served, as prescribed in section eight hundred and fifty-two of this act. This section does not apply to a matter arising, or an act to be done, in an action in a court of record.

§2373 Motion to confirm award.

At any time within one year after the award is made, as prescribed in the last section, any party to the submission may apply to the court, specified in the submission, for an order confirming the award; and thereupon the court must grant such an order, unless the award is vacated, modified, or corrected, as prescribed in the next two sections. Notice of the motion must be served, upon the adverse party to the submission, or his attorney, as prescribed by law for service of notice of a motion upon an attorney in an action in the same court. In the supreme court, the motion must be made within the judicial district, embracing the county where the judgment is to be entered.

§2374 Motion; to vacate award.

In either of the following cases, the court, specified in the submission, must make an order vacating the award, upon the application of either party to the submission:

1. Where the award was procured by corruption, fraud, or other undue means.

2. Where there was evident partiality or corruption in the arbitrators, or either of them.

3. Where the arbitrators were guilty of misconduct, in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence, pertinent and material to the controversy; or of any other misbehavior, by which the rights of any party have been prejudiced.

4. Where the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final, and definite award, upon the subject matter submitted, was not made.

Where an award is vacated, and the time, within which the submission requires the award to be made, has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

§2375 Motion; to modify or correct award.

In either of the following cases, the court, specified in the submission, must make an order modifying or correcting the award, upon the application of either party to the submission:

1. Where there was an evident miscalculation of figures, or an evident mistake in the description of any person, thing, or property, referred to in the award.

2. Where the arbitrators have awarded upon a matter not submitted to them, not affecting the merits of the decision upon the matters submitted.

3. Where the award is imperfect in a matter of form, not affecting the merits of the controversy, and, if it had been a referee's report, the defect could have been amended or disregarded by the court.

The order may modify and correct the award, so as to effect the intent thereof, and promote justice between the parties.

§2376 Motions; when to be made.

Notice of a motion to vacate, modify or correct an award, must be served upon the adverse party to the submission, or his attorney, within three months after the award is filed or delivered, as prescribed by law for service of notice of a motion upon an attorney in an action. For the purposes of the motion, any judge, who might make an order to stay the proceedings, in an action brought in the same court, may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

§2377 Costs on vacating award.

Where the court vacates an award, costs, not exceeding twenty-five dollars and disbursements, may be awarded to the prevailing party; and the payment thereof may be enforced, in like manner as the payment of costs upon a motion in an action.

§2378 Judgment on award; when and how entered; costs.

Upon the granting of an order, confirming, modifying, or correcting an award, judgment may be entered in conformity therewith, as upon a referee's report in an action, except as is otherwise prescribed in this title. Costs of the application, and of the proceedings subsequent thereto, not exceeding twenty-five dollars and disbursements, may be awarded by the court, in its discretion. If awarded, the amount thereof must be included in the judgment.

§2379 Judgment-roll.

Immediately after entering judgment, the clerk must attach together and file the following papers, which constitute the judgment-roll:

1. The submission; the selection or appointment, if any, of an additional arbitrator, or umpire; and each written extension of the time, if any, within which to make the award.

2. The award.

3. Each notice, affidavit, or other paper, used upon an application to confirm, modify, or correct the award, and a copy of each order of the court, upon such an application.

4. A copy of the judgment.

The judgment may be docketed, as if it was rendered in an action.

§2380 Effect of judgment; how enforced.

The judgment so entered has the same force and effect, in all respects, as, and is subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.

§2381 Appeal.

An appeal may be taken from an order vacating an award, or from a judgment entered upon an award, as from an order or judgment in an action. The proceedings upon such an appeal, including the judgment thereupon, and the enforcement of the judgment, are governed by the provisions of chapter twelfth of this act, as far as they are applicable.

§2382 Effect of party's death, lunacy, etc.; proceedings thereupon.

The death of a party to a submission, made either as prescribed in this title or otherwise, or the appointment of a committee of the person or property of such a party, as prescribed in title sixth of this chapter, operates as a revocation of the submission, if it occurs before the award is filed or delivered; but not afterwards. Where a party dies afterwards, if the submission contains a stipulation, authorizing the entry of a judgment upon the award, the award may be confirmed, vacated, modified, or corrected, upon the application of, or upon notice to, his executor or administrator, or a temporary administrator of his estate; or, where it relates to real property, his heir or devisee, who has succeeded to his interest in the real property. Where a committee of the property, or of the person, of a party, is appointed, after the award is filed or delivered, the award may be confirmed, vacated, modified, or corrected, upon the application of, or notice to, a committee of the property; but not otherwise. In a case specified in this section, a judge of the court may make an order, extending the time within which notice of a motion to vacate, modify, or correct the award, must be served. Upon confirming an award, where a party has died since it was filed or delivered, the court must enter judgment in the name of the original party; and the proceedings thereupon are the same, as where a party dies after a verdict.

§2383 Revocation of submission.

A submission to arbitration, made either as prescribed in this title or otherwise, cannot be revoked by either party, after the allegations and proofs of the parties have been closed, and the matter finally submitted to the arbitrators for their decision. A revocation, when allowed, must be made by an instrument in writing, signed by the revoking party, or his authorized agent, and delivered to the arbitrators, of one of them; and it is not necessary, in any case, that the instrument of revocation should be under seal. Any party to a submission may thus revoke it; whether he is a sole party to the controversy, or one of two or more parties on the same side.

§2384 Liability of party who revokes.

Where a party expressly revokes a submission, made either as prescribed in this title or otherwise, any other party to the submission may maintain an action against him, and also against his sureties, if any, upon the submission, or any instrument collateral thereto, in which action the plaintiff may recover all the costs and other expenses, and all the damages, which he has incurred in preparing for the arbitration, and in conducting the proceedings to the time of the revocation. Either of the arbitrators may recover, in an action against the revoking party, his reasonable fees and expenses.

§2385 Limitation of recovery against him.

A sum, penalty, forfeiture, or damages, shall not be recovered for a revocation of a submission to arbitration, made either as prescribed in this title or otherwise, except as prescribed in the last section; notwithstanding any stipulated damages, penalty, or forfeiture, expressed in the submission, or in any instrument collateral thereto.

§2386 Application of this title.

This title does not affect any right of action in affirmance, disaffirmance, or for the modification of a submission, made either as prescribed in this title or otherwise, or upon an instrument collateral thereto, or upon an award made or purporting to be made in pursuance thereof. And, except as otherwise expressly prescribed therein, this title does not affect a submission, made otherwise than as prescribed therein, or any proceedings taken pursuant to such a submission, or any instrument collateral thereto.

HAND BOOK FOR ARBITRATORS

PREPARED FOR THEIR GUIDANCE BY

JULIUS HENRY COHEN

OF THE NEW YORK BAR

HAND BOOK

PREFATORY NOTE.

At the request of the Committee on Arbitration of the Chamber of Commerce, this hand-book was prepared for the guidance of those who are from time to time called upon to act as arbitrators, under the system of commercial arbitration re-established in 1911. It is not intended as a treatise on the law, nor is it a complete survey of all of the matters that may come before an arbitrator. It simply attempts to furnish some plain, helpful guidance to laymen called upon to undertake tasks differing somewhat from those to which they are accustomed.

THE NATURE OF ARBITRATION.

The very fact that the parties have agreed to arbitrate indicates that they realize that a difference has arisen which requires intervention by some third party. The parties realize that to litigate is an expensive procedure, and that when all is said and done, the verdict of a jury, or the decision by a Court may not be satisfactory to either side. The parties do not intend to *compromise* their claims by submitting to arbitration. They could compromise without the aid of the third party, if they so desired. Some question of interpretation, some misunderstanding as to the facts has arisen that the parties realize must be submitted to the test of reason and analysis, and as each is biased, he realizes that he is not competent to be the final arbitrator. By submitting to arbitration, instead of going to Court, the parties indicate also that they do not desire to dispose of the question according to technical rules of legal procedure, but desire instead to get a decision according to the justice and reason of the case. This should be constantly borne in mind throughout the hearing and consideration of the case.

QUALIFICATIONS OF ARBITRATORS.

It goes without saying that the arbitrators should not be related in any way to either side, nor be interested in any fashion whatever. More than that, they should not be biased or prejudiced against either of the parties.

Any person interested in the event or related in any way to either of the parties, or biased or prejudiced, is disqualified.

Almost every business man is accustomed to listen patiently to facts and to form conclusions thereon. On the other hand, not many men have the patience to sift evidence and discuss differences.

Having reached a conclusion in their own way, by their own individual mental processes, most business men are reluctant to go through the irksome process of convincing others of the soundness of their deductions. The wise arbitrator will not only deliberate with great pains, but will listen with patience to everything that can be said upon the subject and refuse to render final judgment until he has heard all that can be said. The experienced man knows that a slight change in circumstances may result in entirely different conclusions.

ATTITUDE TOWARD DISPUTANTS.

A testy or impatient Judge may sometimes do justice, but very frequently does quite the contrary. A painstaking, considerate Judge will not only earn the gratitude of the disputants, but when his decision is rendered, it will be accepted with good grace and with confidence in its fairness.

POWER OF ARBITRATORS.

Under the form of submission provided by the Code of Civil Procedure and the rules of the Chamber of Commerce and its Committee on Arbitration, the arbitrators must make a final decision, which, in the language of the Code, must be a "*mutual, final and definite award* upon the subject matter submitted." This means first of all that the controversy must be *finally* settled, with no questions left open for future decision. It likewise means that it must be a decision that is binding upon *both* parties. It must also be definite in the sense that it must be clear and certain, not left to surmise or future action. [This does not mean that the decision may not require that one party shall do an act before the other side shall become liable.]

The arbitrators have power to summon and swear witnesses. They have the power to take, and indeed must take, the evidence "pertinent and material to the controversy." They have the power to, and indeed must, adjourn the hearing "upon sufficient cause shown."

They have the power to follow or disregard rules of law. All questions of law or fact upon which the rights of either party depend in the controversy are submitted for final decision to the arbitrators. They may disregard the strict rules of law and evidence, and decide according to their sense of equity, but any violation of natural justice by an arbitrator, such as receiving material evidence from one of the parties without the knowledge or consent of the other, is condemned by the Courts, and in several cases awards have been set aside

for such reasons. It has been held that even if the arbitrator be a lawyer, he may disregard the rules of law and decide according to his own idea of the justice of the case.

THE BASIS OF AUTHORITY.

The basis of authority of the arbitrators is to be found in the *submission*, signed by the parties, by which they voluntarily submit the controversy, dispute or matter of difference between them relating to the subject matter stated in the formal submission, to which reference must be made by the arbitrators for the purpose of determining what the controversy, dispute or matter of difference may be. The parties, by the submission, voluntarily submit the matters in dispute and all matters concerning it to the arbitrator, or arbitrators, pursuant to the By-laws of the Chamber of Commerce, and pursuant to Chapter 17, Title VIII., of the Code of Civil Procedure of the State of New York, and the rules and regulations adopted by the Committee on Arbitration of the Chamber of Commerce. They agree to stand to, abide by and perform any and all decisions, awards, order or orders and judgment that may be made by the arbitrators, and they further agree that a judgment of the Supreme Court of the State of New York may be entered in any County in the State upon said award. They also waive the right to withdraw or revoke the submission after the arbitrator or arbitrators have accepted their appointment.

The provisions of law referred to as Chapter 17, Title VIII., are Sections 2365 to 2386 inclusive, of the Code of Civil Procedure of the State of New York. The provisions of the Code are intended to provide for an authorized legal method of arbitration, by which judgments in the Supreme Court may be secured after the decision of the arbitrators, and by which any corrupt, fraudulent award, or one obtained by any undue means, or partiality or where the arbitrators were guilty of misconduct, or exceeded their powers, may be vacated.

It is by virtue of these provisions of law that the arbitrators are given power to subpoena and swear witnesses and take evidence as would a Judge in a court of law.

THE SUBMISSION.

The submission constitutes what would otherwise be the pleadings in a court of law and is apt to state the subject matter of the controversy in such general terms as to make it difficult for the arbitrators to determine the scope of their arbitration. At the threshold of the case they should examine the submission and if it does not furnish them

with a sufficient guide as to the scope of the arbitration, they should require the parties to state the controversy with more detail, or decline to proceed. Such a statement may be made in the shape of an amended submission or may be made by the parties at the first hearing before the arbitrators, and taken down stenographically. If both parties assent to the statement thus taken down, they will be bound by it.

ENTRY OF FINAL JUDGMENT. It is important for the arbitrators to bear in mind that their decision is to have the force and effect of a judgment of the Supreme Court of the State of New York, and, therefore, their decision must be in such form that the successful party may procure from the Court a judgment based upon the decision of the arbitrators.

SETTING ASIDE OF AWARD. The award can be set aside for any of the following reasons:

(*a*) *Corruption.* Of course under this heading are included all forms of bribery, whether the consideration be in money or in any other form.

(*b*) *Fraud.* This would of course include any kind of fraud or deception going to the merits of the case before the arbitrators. Manufactured evidence, deliberate perjury, would come under this head.

(*c*) *Other undue means.* Under this head is included undue influence with the arbitrators, threats, secretion of evidence, concealing of books or papers.

(*d*) *Evident partiality on the part of the arbitrators, or either of them.*

(*e*) *Where the arbitrators have exceeded their powers.* This includes all cases where the arbitrators went beyond the scope of the submission, or decided the case upon evidence not submitted to them or for considerations not before them officially. Such would be the case where after a case has been closed one of the arbitrators produces and exhibits to the others, in the absence of the parties, written testimony signed by witnesses relating to the controversy, which would possibly have affected the award as made.

(*f*) *Where the arbitrators refused to postpone the hearing upon sufficient cause shown.*

(*g*) *Where the arbitrators refused to hear evidence that was pertinent and material to the controversy.*

(*h*) *Where the arbitrators have been guilty of any kind of misbehavior by which the rights of any party have been prejudiced.*

(*i*) *Where the arbitrators imperfectly executed their powers and failed to make "a mutual, final and definite award" upon the subject matter submitted.*

MODIFICATION OF AWARD. The Court has power to modify or correct the award in such cases as where there was an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property, referred to in the award, or where the award is imperfect in matters of form not going to the merits of the controversy, or where the arbitrators have gone beyond the matters submitted to them and have decided upon a matter not submitted to them, not affecting the merits of the decision upon the matter submitted.

PROCEDURE. Before evidence is taken, the arbitrators must be sworn by a notary or other officer authorized to administer oaths, "faithfully and fairly to hear and examine the matter in controversy and to make a just award according to the best of their understanding." The notary should certify that the oath has been taken, designating the time, place and name of the arbitrator sworn, and the certificate of the notary should be made part of the record. The oath must be taken in this form unless it is waived by the written consent of the parties to the submission or their attorneys.

Notice of the time and place of each hearing should be given to each of the parties, but where the hearing is properly adjourned in the presence of the parties to a time and place definitely mentioned, no further notice is required.

The arbitrators should, after taking the oath, read the submission and, before taking any evidence, for the purpose of familiarizing themselves with the points in controversy, ask both sides to present their points of view. They should then decide the order in which they will take proof and in what order they care to hear witnesses. This procedure they may regulate in each case according to their discretion, but they must before the proceeding is closed, take and consider *all* evidence that is material and pertinent to the controversy *that is offered by either party.* They should give the parties full

opportunity to produce witnesses and documents. Where documents are in the possession of either party that the other desires to examine, they should require the party in possession of the documents to produce them for examination. They should within reasonable limits permit cross-examination of witnesses. The party who calls the witness should not be permitted to put the words into the witness' mouth by asking leading questions, nor should time be spent upon evidence that has no relation to the controversy whatever. All collateral issues should be avoided. In case the parties have a reasonable excuse for not being ready on the trial day, the arbitrators should adjourn the hearing. They should facilitate the taking of testimony outside of the State, if in their judgment they think such testimony will assist them in determining a controversy. They should receive the testimony of experts called by either of the parties, and may receive the tabulations of accountants for the purpose of assisting them in arriving at a conclusion.

They should permit the parties fully to discuss the issues before them and to sum up the case. If any law points are involved, they should disregard pure technicalities and go to the merits. If they believe that the legal proposition is based upon sound sense and the experience of mankind generally, they should follow it. They may if they desire information as to the law on any point consult counsel not interested in the case.

In this connection, they should bear in mind that their decision is not only of value in deciding the controversy for the parties in interest, but will form also a precedent for the future guidance of other arbitrators in deciding similar disputes. A series of commercial precedents has a very important value to the business community and the certainty of knowing how important questions will be answered, will serve to prevent controversies in the future. For this reason, where the matter is of sufficient consequence, a written opinion by the arbitrators, like the opinion of a court, is of very substantial value to the commercial community as a precedent.

END OF
TITLE